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**From:** Lidgard, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CEEAAE464E754D259A772347572B7956-LIDGARD, MICHAEL]  
**Sent:** 3/6/2019 11:52:45 PM  
**To:** McCauley, Margaret [McCauley.Margaret@epa.gov]; Palmer, John [Palmer.John@epa.gov]; Wu, Jennifer [Wu.Jennifer@epa.gov]; Seyfried, Erin [Seyfried.Erin@epa.gov]; Merz, Martin [merz.martin@epa.gov]; Vakoc, Misha [Vakoc.Misha@epa.gov]; Petersen, Maxwell [petersen.maxwell@epa.gov]; Poulsom, Susan [Poulsom.Susan@epa.gov]; Burgess, Karen [Burgess.Karen@epa.gov]  
**CC:** Weber, Courtney [Weber.Courtney@epa.gov]  
**Subject:** RE: Ecology-EPA CWA 401 process

I think it will generally be the same. Some differences since Ecology has regs around their process, and tribes could as well, but generally the same.

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**From:** McCauley, Margaret  
**Sent:** Wednesday, March 6, 2019 12:02 PM  
**To:** Palmer, John <Palmer.John@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>; Lidgard, Michael <Lidgard.Michael@epa.gov>; Seyfried, Erin <Seyfried.Erin@epa.gov>; Merz, Martin <merz.martin@epa.gov>; Vakoc, Misha <Vakoc.Misha@epa.gov>; Petersen, Maxwell <petersen.maxwell@epa.gov>; Poulsom, Susan <Poulsom.Susan@epa.gov>; Burgess, Karen <Burgess.Karen@epa.gov>  
**Cc:** Weber, Courtney <Weber.Courtney@epa.gov>  
**Subject:** RE: Ecology-EPA CWA 401 process

This is very helpful to see the possible process(es). Would there be any reason that it would be different for the Tulalip Tribes?

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**From:** Palmer, John  
**Sent:** Wednesday, March 06, 2019 10:21 AM  
**To:** Wu, Jennifer <Wu.Jennifer@epa.gov>; Lidgard, Michael <Lidgard.Michael@epa.gov>; Seyfried, Erin <Seyfried.Erin@epa.gov>; Merz, Martin <merz.martin@epa.gov>; Vakoc, Misha <Vakoc.Misha@epa.gov>; McCauley, Margaret <McCauley.Margaret@epa.gov>; Petersen, Maxwell <petersen.maxwell@epa.gov>; Poulsom, Susan <Poulsom.Susan@epa.gov>; Burgess, Karen <Burgess.Karen@epa.gov>  
**Cc:** Weber, Courtney <Weber.Courtney@epa.gov>  
**Subject:** Re: Ecology-EPA CWA 401 process

Good point Jenny. A variant to the approach below is for Ecology to include its comment letter on EPA's preliminary draft permit in Ecology's public notice of the 401 cert request.

OR, absent Ecology review of our preliminary draft permit, we just go directly to public notice on our draft permit and request 401 cert. at that time. Under this approach a 2nd public notice on our permit, which includes the 401 cert conditions, is I believe very likely as Jenny notes.

## Ex. 5 Deliberative Process (DP)

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**From:** Wu, Jennifer

**Sent:** Wednesday, March 6, 2019 9:56 AM

**To:** Lidgard, Michael; Palmer, John; Seyfried, Erin; Merz, Martin; Vakoc, Misha; McCauley, Margaret; Petersen, Maxwell; Poulosom, Susan; Burgess, Karen

**Cc:** Weber, Courtney

**Subject:** RE: Ecology-EPA CWA 401 process

Hi Mike, thanks for the message. I think we should also be thinking about whether EPA HQ will allow us to put information in the draft permits that are in Ecology's comments, but not in their 401 cert. I could be wrong, but have doubts that would be the case for Ecology comments EPA HQ deems controversial.

For instance, if Ecology requires a temperature management plan that covers the operations of the dams (outside our NPDES discharges scope), would EPA HQ allow that to be included in the public draft permit? If no, I'd think we'd have to go back out for a 2<sup>nd</sup> public comment on that significant of an issue. I think the stormwater permit may be in the same boat (?). I know we need to do the best with the situation before us, but I just wanted to raise this so we go into the process knowing things could go differently than planned.

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**From:** Lidgard, Michael

**Sent:** Wednesday, March 06, 2019 9:23 AM

**To:** Palmer, John <Palmer.John@epa.gov>; Seyfried, Erin <Seyfried.Erin@epa.gov>; Wu, Jennifer <Wu.Jennifer@epa.gov>; Merz, Martin <merz.martin@epa.gov>; Vakoc, Misha <Vakoc.Misha@epa.gov>; McCauley, Margaret <McCauley.Margaret@epa.gov>; Petersen, Maxwell <petersen.maxwell@epa.gov>; Poulosom, Susan <Poulosom.Susan@epa.gov>; Burgess, Karen <Burgess.Karen@epa.gov>

**Cc:** Weber, Courtney <Weber.Courtney@epa.gov>

**Subject:** RE: Ecology-EPA CWA 401 process

Hi, John and I talked with Vince and Elle on Monday and came up with an initial strawman proposal on certs at least for the dam and Navy permits. A couple of you have asked about that this week so I'm forwarding what we have at the moment fyi. Courtney is looking it over now. After that we should all get together and discuss. Eventually we'll need to get back with Vince and Elle and also get Dan/Heather in the loop. - Mike

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**From:** Palmer, John

**Sent:** Monday, March 4, 2019 3:49 PM

**To:** Lidgard, Michael <Lidgard.Michael@epa.gov>

**Cc:** Weber, Courtney <Weber.Courtney@epa.gov>

**Subject:** Ecology-EPA CWA 401 process

Hi Mike, here is a write-up of our call today with Ecology (Vince and Elle). Courtney, we would like your thoughts and input and can discuss further. One question we had for you is:

**Ex. 5 AC/DP**

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We were assuming this, and the below process is in part intended to avoid that.

John

## Possible Ecology-EPA CWA 401 Process for EPA-issued NPDES Permits in Washington

The objectives of this approach are to provide public transparency, intergovernmental coordination and efficiency, adequate and timely review, and minimize the potential need for EPA to issue a 2<sup>nd</sup> public notice because Ecology's CWA 401 certification conditions substantially change the draft permit.

1. EPA provides a preliminary draft permit to Ecology and provides 30 days for comments. EPA notes that it is not requesting 401 certification at this time, but plans to do so when it issues the public notice for the draft permit.
2. Ecology provides a comment letter to EPA on the preliminary draft permit. Ecology notes that their comment letter is not a 401 certification.
3. EPA issues a public notice for the draft permit and seeks public comment (30-60 days) and requests CWA 401 certification from Ecology (60 days). EPA includes Ecology's comment letter on the preliminary draft permit as part of the public notice material.
4. Ecology issues a public notice on EPA's request for CWA 401 certification concurrent with EPA's public notice of the draft permit and seeks public comment (20 days).
5. Ecology issues a CWA certification for the draft permit within 60 days of EPA's request.
6. EPA considers public comments, conducts ESA review, incorporates Ecology's CWA 401 Cert. conditions and issues the final permit.